

## **INITIAL MEMORANDUM OF UNDERSTANDING**

This Initial Memorandum of Understanding (MOU) is voluntarily entered this \_\_\_\_ day of August, 2018, by and among the Wisconsin Department of Natural Resources (WDNR), Juneau County, Wood County and the Armenia Growers Coalition LLC. This initial MOU is established for 90 days as the provisions are discussed and a long term MOU can be developed.

### **A. Background**

WHEREAS Juneau and Wood County (the “Counties”), in the interest of ensuring their residents have access to safe drinking water, have tested private potable wells in the Counties and identified wells that had water quality that exceed the state drinking water standard of 10 mg/L for nitrate.

WHEREAS the Armenia Growers Coalition, LLC (AGC) represents three farms that are currently the predominant farmers in the agricultural corridor that is west of the Wisconsin River, south of Port Edwards, north of Necedah, and east of several state natural and wildlife areas (the “agricultural corridor”). This area is outlined on the attached map marked Exhibit A.

WHEREAS AGC, in receipt of the aforementioned testing results, has voluntarily coordinated and collaborated with the Counties on a response effort to offer residents in the agricultural corridor with wells testing at or above 10 mg/L for nitrates an in-home point-of-use water treatment system and bottled drinking water until installation of such a system (the Clean Drinking Water Plan).

WHEREAS the “nitrate impacted” will be used to identify well water having nitrate concentrations that are at or above 10.0 mg/L through a series of 3 tests throughout the year. Wells having concentrations at 8.0 mg/L or above will be tested at a minimum of three separate periods to ensure that the timing of any individual test would not bias the results

WHEREAS a “water test” is defined as a well water sample collect by or verified by a County employee and the nitrate concentration is determined by a state certified/DNR approved lab. Any test result that can’t be verified will be re-tested to ensure quality.

### **B. Agreement**

The process the Parties agree to follow to implement the Clean Drinking Water Plan is as follows:

1. Water Treatment System, for purposes of this MOU, means a reverse osmosis or a similar treatment system that will reduce nitrates in drinking water to below 10 mg/L to be professionally installed by a licensed professional selected by AGC. This system will provide drinking water to a spigot located at the kitchen sink and/or, depending on water pressure requirements, appliance compatibility, and the recommendation of the licensed plumber, the refrigerator.

2. For private residential wells located in the agricultural corridor that have been identified by the Counties to provide water that contains nitrates in concentrations above at or 10mg/L (“nitrate impacted”) as of the execution of this initial MOU, it is understood that:
  - a. The Counties have provided AGC a confidential list of addresses for each of the wells they have identified as nitrate impacted.
  - b. AGC has sent a letter to each identified well owner, making an offer outlined in Section 3.d below. A copy of the sample letter is attached as Exhibit B.
  - c. If AGC does not hear from a homeowner letter recipient within one week, it will send a follow up correspondence.
  - d. If AGC does not hear from the homeowner within a week of sending the second communication, it will notify the Counties of same and the Counties will then assume primary responsibility for contacting the homeowner regarding the Clean Drinking Water Plan. The lack of successful contact with a homeowner does not preclude the homeowner from accepting AGC’s offer at a later date, provided that within the previous twelve (12) months a County-verified water test indicates the home is nitrate impacted.
  - e. If the homeowner accepts the offer to install a Water Treatment System, the procedures in 3.e-f will apply.
3. After the signing of this initial MOU, if the Counties receive a report and testing results(s) conducted by a laboratory certified by DNR, that a private residential well located in the agricultural corridor has been identified to be nitrate impacted, it is understood that:
  - a. The Counties, through their Health Departments, will verify the sampling results; including re-testing the drinking water in the event the sample was not collected by the Counties. The Counties will also notify the owner(s) of the residence of the test results.
  - b. The Counties will then do four (4) things: 1) advise the homeowner not to ingest the water and provide educational materials on the health impacts of ingesting water above the drinking water standard for nitrates, 2) advise the homeowner to contact the WDNR and report the test results, and 3) confidentially send AGC the contact information for the homeowner, and 4) inform the homeowner of the Clean Water Drinking Plan and provide AGC’s contact details should the homeowner wish to reach out directly to AGC to arrange for immediate home delivery of safe drinking water and the installation of a Water Treatment System. Upon receipt from the Counties of the contact information for a homeowner with a nitrate impacted well within the agricultural corridor, AGC will send a letter (Exhibit B) making the offer outlined in Section 3.d. below, and will provide follow up communications as described above in Section 2.c-e.
  - c. If contacted by a homeowner in the agricultural corridor with a nitrate impacted residential well that has been identified by the Counties, AGC will take three (3) actions regardless of the suspected source of the nitrates:

1) Offer, at no cost to the homeowner, to install a Water Treatment System that will bring their drinking water under the 10 mg/L limit, so long as a

licensed plumber, chosen by AGC, determines the homeowner's well and plumbing is code compliant and reasonably compatible with the Water Treatment System;

2) Offer to immediately send the homeowner a two week supply of drinking water. If the homeowner accepts the offer of a Water Treatment System within two weeks, then AGC will continue to supply the homeowner with drinking water until the Water Treatment System is installed and verified to produce drinking water under the 10 mg/L standard for nitrates. Homeowners that do not accept the offer of a Water Treatment System within two weeks will not receive further drinking water from AGC. AGC will be invoiced directly for the Water Treatment System and drinking water deliveries.

3) Continue to offer bottle water to those homes that do not have well and plumbing that is code compliant or not reasonably compatible with the Water Treatment System until an alternative solution can be determined and agreed upon by all parties.

- d. For homeowners that accept the offer of a Water Treatment System, a licensed plumber will be dispatched to the home as soon as practicable to conduct an inspection. The plumber will enter the home only after the homeowner has signed a simple access agreement. Upon completion of the inspection, the licensed plumber will send a report of the inspection to the homeowner, the WDNR, the Counties, and AGC. Any necessary well or plumbing repairs identified by the inspection will be reported and potential improvements or alternative options will be discussed among parties, while bottle water is continued to be provided to the homeowner.
  - e. Homes with plumbing and wells meeting the requirements for a Water Treatment System will have a Water Treatment System installed by a professional installer as soon as practicable. After the installation of the Water Treatment System, the professional installer and the homeowner will together take a sample of the drinking water and provide their initials on the sample. The sample will then be tested by a DNR certified laboratory for nitrates. The results of the water test will be shared with the homeowner, professional installer, and the Counties. If the water test indicates nitrates are below 10 mg/L, drinking water deliveries will cease to the homeowner. If the test indicates nitrates are at or above 10 mg/L, AGC will continue to provide drinking water deliveries and work with the homeowner to ensure a Water Treatment System is installed and is not nitrate impacted. A water test of the treated water will be tested every 3 months within the first year by the homeowner (with County assistants) and paid for by AGC to ensure efficiency of the Water Treatment System and to identify potential long term cost of operation.
4. WDNR Obligations: WDNR will serve as a communication liaison to update the U.S. Environmental Protection Agency as to the status of the Clean Drinking Water Plan. Monthly reports will be generated by AGC and sent to WDNR and the Counties for the

first six (6) months of the program. Further reporting will be evaluated at the end of the first six (6) months.

### **C. Provisions to be Addressed**

1. Given the condition of the groundwater quality and the limited knowledge of the extent and depth of potential nitrate impacted groundwater, all parties will collaborate to develop a groundwater study plan to identify potential long term solutions through water tests and modeling. Goals of this study may include; 1) Identifying depths of safe/non-nitrate impacted water for wells to be potentially established. 2) Identify the sources and “age” of the groundwater to identify likelihood that water will remain non-nitrate impacted. 3) Define guidelines for any new homes or land use changes to ensure safe drinking water to residents or future groundwater users.
2. Develop a producer-led groundwater program, where the AGC and other growers will work with the State and Counties to identify agricultural practices changes that will begin to reduce the nitrogen loading to the soil in the area identified, yet maintaining the agricultural businesses. These practice changes will be evaluated for water quality improvements with the practice changes defined and shared. Practice changes may include but not limited to changes in crop rotations, reductions of nitrogen applications, changes in the timing of applications, and the use of cover crops. In addition, educational programs will be developed for residents in the impacted area to describe the changes that are being made and the goal of the program.
3. Define roles and responsibilities among parties for existing homes that do not have wells and plumbing that are not code compliant and providing a long-term safe drinking water solution.
4. Evaluate long term cost restrictions for homeowners that receive functioning Water Treatment Systems and responsible party for long term maintenance.
5. Develop a map of the groundwater impacted area using existing data to better define the extent and number of drinking wells that should be evaluated.

### **D. General Conditions**

1. The Parties will each designate a representative to lead and coordinate implementation of this MOU, including communication, representation and participation.
2. No Admission of Liability.
  - a. The Parties acknowledge that this executed initial MOU presents a reasonable and voluntary approach providing clean drinking water for residents of the agricultural corridor;
  - b. All Parties understand, acknowledge and agree that this initial MOU is voluntarily entered and is not to be construed as an admission of any liability, responsibility or wrongdoing whatsoever on the part of any party or its members, collectively or

individually, any and all such liability is expressly denied and defenses expressly reserved.

3. Notice under this initial MOU shall be as follows:

- a. AGC: [Insert Contact]
- b. Juneau County: [Insert Contact]
- c. Wood County: [Insert Contact]
- d. WDNR: [Insert Contact]

4. This initial MOU is voluntary in nature and any party may withdraw from participation herein in the party's sole discretion and such withdrawal shall not affect the remaining parties' agreement to continue to perform hereunder or to terminate this initial MOU. The Parties further agree that this initial MOU may be amended in the future as necessary to implement the Clean Water Plan, but such amendment shall only be effective in a writing signed by all parties then participating and agreeing to be so bound.

5. By signing below, each signatory represents and warrants that he or she has the authority to enter into this initial MOU and to so bind the respective party. This may be executed in counterparts and as so executed shall constitute one agreement binding on the Parties. Delivery of an executed counterpart of this initial MOU by email or other electronic means will be equally as effective as delivery of a manually executed counterpart of this initial MOU.

6. This initial MOU is effective as of the date listed above, [Insert Date].

[SIGNATURES ON FOLLOWING PAGE]